

11 June 1982

MEMORANDUM FOR: Executive Director

FROM: Stanley Sporkin
General Counsel

SUBJECT: Weekly OGC Report for the DCI/DDCI

ITEMS OF MAJOR INTEREST - 5 - 11 JUNE 1982

Procedures Implementing E.O. 12333. Attorney General Smith has signed the new procedures governing CIA activities outside the United States and the procedures relating to the conduct of counterintelligence activities outside the United States by the FBI. Upon the signing by the DCI of the procedures governing CIA activities abroad, both sets will be forwarded by CIA to the Senate and House Intelligence Committees, and both will become effective in seven days.

Judicial Decision Supporting Secrecy of Identities of Intelligence Personnel. In Gelfand v. Attorney General, DCI, et al., Gelfand claims that alleged CIA and FBI agents in the Socialist Workers Party (SWP) expelled him from the Party. In pretrial discovery, Gelfand submitted interrogatories asking the DCI whether 19 named SWP members are or have been CIA agents and whether CIA believes that one named individual is a Soviet intelligence agent. The DCI refused to answer the interrogatories on the ground that answering them would tend to reveal intelligence activities, sources, and methods. The U.S. District Court hearing the case upheld the DCI's refusal to answer, holding that the DCI's statutory responsibility to protect intelligence sources and methods and the CIA's statutory exemption from any requirement to disclose the names or functions of CIA personnel justify the refusal to answer. The Gelfand case is the second case in what appears to be a developing trend in the law of recognizing a DCI/CIA statutory privilege against disclosure of intelligence identities in pretrial civil discovery.

Legislative Developments. On Thursday, 10 June, the Senate approved the conference report on H.R. 4, the Intelligence Identities Protection Act, by a vote of 81 to 4. The Senate action clears the legislation for the President's signature.

The Senate Judiciary Subcommittee on Agency Administration met on Wednesday, 10 June, to mark up S. 1775, which would amend the Federal Tort Claims Act to substitute the U.S. Government for its employees as the defendant in cases based upon employees' acts performed within the scope of their

employment. Subcommittee Chairman Charles Grassley, who has strongly supported the Administration's efforts to enact S. 1775, adjourned the Subcommittee meeting without acting on the legislation when it became apparent that the Subcommittee Members present supported amendments which would have a debilitating impact on the legislation.

EEO Case. The Equal Employment Opportunity Commission recently affirmed the final Agency decision in the [redacted] case. [redacted] an Agency employee, charged that race and/or sex discrimination was the cause of her failure to win a promotion. She appealed that decision to the EEOC after a hearing examiner had found no discrimination and the Agency had issued a final decision adopting the examiner's recommendation. The examiner relied chiefly on an important Supreme Court opinion issued last year which clarified and reaffirmed the traditional managerial prerogative to choose among qualified candidates for a position.

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Former Employees' Claim. OGC representatives met with Office of Personnel Management (OPM) officials regarding a decision by an Administrative Law judge supporting the claims of seven former CIA employees that their CIA time should be credited toward a law enforcement annuity following their transfer to the Drug Enforcement Agency (DEA). The employees stated, and this appears to be supported by the record, that they had been promised this at the time of their transfer. OPM had held that the DEA promises could not be upheld because CIA did not engage in law enforcement. The judge was persuaded that a more expansive definition of law enforcement was possible, and he held that the CIA time could be credited toward a law enforcement annuity. OPM was informed that the Director of Personnel and DO officials were not troubled by the decision. OPM now is considering whether to appeal or seek a settlement which would satisfy our former employees while getting the Administrative Law judge's decision withdrawn.

ANTICIPATED SIGNIFICANT EVENTS 12 - 18 June 1982

Former Spouses. The Senate Select Committee on Intelligence will mark up S. 2422, the Central Intelligence Agency Retirement and Disability System Spouses' Equity Act of 1982, on 17 June.

[redacted]
Stanley Sporkin

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